

9P



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,687	12/05/2003	Gary L. Hopkins SR.	ST288/00ST8-U	4572

7590 03/11/2005

JOHN V. MORIARTY
WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
111 MONUMENT CIRCLE-SUITE 3700
BANK ONE TOWER/CENTER
INDIANAPOLIS, IN 46204-5137

EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
----------	--------------

3742

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

58

Office Action Summary	Application No. 10/729,687	Applicant(s) HOPKINS, GARY L.	
	Examiner Philip H Leung	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-20-2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The replacement drawing sheets filed 12-20-2004 are NOT acceptable because they are not properly labelled as such.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 5-7 (inadvertently typed as “5-6” in the previously Office action) are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al (US 4,933,526) (previously cited).

Fisher shows a microwave cooking tray (10) comprising a base (11) having at least two compartments (cavities 12, 13, 14, 15), each compartment having a bottom surface defining a pattern, the bottom surface of one of said compartments defining a first pattern and a bottom surface of a second of said compartments defining a second pattern, wherein said first and second patterns are distinct and each designed for optimal cooking of a particular type of food product (It is pointed out that the term “optimal” is highly relative and does not have a standard definition in the art of cooking, it is submitted that Fisher meets the claimed intended function as it teaches to use cavity shape to conform with food type. Fisher states at col. 3, lines 3-13, that the cavities preferably will vary in geometry to simulate the normal variations and distribution encountered in a naturally occurring finished food items); and a covering film 16 secured to said base and sealing each compartment (see Figures 1 and 2 and col. 2, line 65 – col. 3, line 49).

Art Unit: 3742

4. Claims 1-3 and 5-7 are further rejected under 35 U.S.C. 102(b) as being anticipated by Stone (US 4,866,232) (newly cited).

Stone shows a microwave cooking tray (221) comprising a base (as shown in Figure 10) having at least two compartments (X, Y Z), each compartment having a bottom surface defining a pattern, the bottom surface of one of said compartments defining a first pattern (I') and a bottom surface of a second of said compartments defining a second pattern (II' or III'), wherein said first and second patterns are distinct and each designed for optimal cooking of a particular type of food product (the patterns I', II', III' are formed of metallized ink deposit on predetermined surfaces of a food packaged to obtain areas of enhanced heat according to different food, see col. 7, lines 42-63). Although the patterns in Figure 11 are formed on the outer container 223, it also clearly states that "in lieu of the metallized ink being deposited on the bottom panel of the bottom section, it may be deposited directly onto either the exterior or interior surface of a predetermined number of the compartments (X, Y, Z). Furthermore, in certain instances it may be desirable that either the entire interior or exterior surface of the container have deposited thereon the metallized ink" (see Figures 9-11 and col. 6, line 36 – col. 7, line 23).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3742

6. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al (US 4,933,526), in view of Matos (US 5,780,824) (newly cited).

As set forth above Fisher shows every feature as claimed except for a different venting arrangement. It shows the use of holes in the cover 16 for venting steam during cooking (see col. 5, line 49-52). Matos shows a microwave food package 1 with a vent (7, 25) having a seal 12 which is responsive to the predetermined pressure to automatically vent the package (see Figures 1-3 and col. 2, line 66 – col. 3, line 9 and col. 4, lines 12 – 41). It would have been obvious to an ordinary skill in the art to modify Fisher to use a vent which automatically opens upon a predetermined pressure for better heating result, in view of the teaching of Matos.

7. Claims 4 and 8 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (US 4,866,232), in view of Matos (US 5,780,824).

As set forth above Stone shows every feature as claimed except for the use of a vent. However, the use of a cover to seal a food tray is a necessary and routine practice in the art of food packages. Anyway, Matos shows a microwave food package 1 with a vent (7, 25) having a seal 12 which is responsive to the predetermined pressure to automatically vent the package (see Figures 1-3 and col. 2, line 66 – col. 3, line 9 and col. 4, lines 12 – 41). It would have been obvious to an ordinary skill in the art to modify Stone to provide a vent in the cover which automatically opens upon a predetermined pressure for better heating result, in view of the teaching of Matos.

Art Unit: 3742

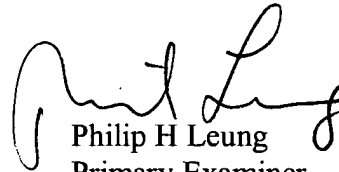
8. Applicant's arguments filed 12-20-2004 have been fully considered but they are not persuasive. The broadly worded limitations "bottom surface defining a pattern" and "first and second patterns are distinct from each other" do not define over Fisher. As pointed out above, Fisher shows in Figures 1 and 2 and at col. 3, lines 3-13, that the cavities preferably will vary in geometry to simulate the normal variations and distribution encountered in a naturally occurring finished food items. As the cavities 12-15 have different shapes and cross sections, the bottom surfaces definitely are different in patterns, for instance, the cross section of cavity 12 is rectangular and is triangular for cavity 13. Therefore, at least the cavities 12 and 13 have a bottom surface defining a first pattern and a second pattern distinct from each other. There is no structure for "bottom surface pattern" defined in the claims and therefore must be given the broadest interpretation. Furthermore, Stone which shows a microwave package with different ink deposit patterns on the food compartments also meets the claimed structure for the reasons set forth. Also, the use of steam operated venting arrangement is well known in the art of microwave food packages, to provide the same on any microwave food packages to prevent sogginess and to reduce pressure buildup would have been a matter of routine practice and requires no hindsight teaching.

Art Unit: 3742

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 472-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
3-7-2005